# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~546.~~ 99

JEAN M. LAPEYRE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

**FILED JUNE 7, 1871.**

# SUPREME COURT OF THE UNITED STATES.

## No. 546.

JEAN M. LAPEYRE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the United States Court of Claims.

J. M. LAPEYRE
*vs.*
THE UNITED STATES. } No. 3512. Filed Aug. 19, 1868.

To the honorable the judges of the Court of Claims:

The petition of J. M. Lapeyre, a resident of the City of New Orleans, respectfully represents:

That, on the 24th day of June, 1865, a shipment of cotton, amounting to 476 bales, consigned to and owned by your petitioner, was in New Orleans, of which twenty-five per cent., or one hundred and nineteen (119) bales were taken by O. N. Cutler, United States Treasury agent at that place, for the use of the United States; and the said cotton was shipped from New Orleans to New York, where it was sold by Simeon Draper, and the proceeds held by the Treasury Department.

That the taking of this aforesaid cotton was wholly illegal and unauthorized, the twenty-five per cent. purchasing-agency tax, which it purported to be, having been discontinued and annulled upon said day by proclamation of the President.

That the Secretary of the Treasury, on application of parties entitled to it, refunded the said twenty-five per cent. tax collected on the said 24th day of June, 1865, out of the captured and abandoned property fund, so long as that fund was at his disposal; but now says he has no fund out of which to make restitution.

2 And your petitioner, therefore, prays this honorable court to adjudge and award him the proceeds of said one hundred and nineteen bales of cotton.

That your petitioner is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not voluntarily aided, abetted, or given encouragement to the rebellion against the said Government.

J. M. LAPEYRE,
By BLACK, LAMON & CO.

Cha's E. Hovey, one of the attorneys for claimant, being duly sworn, deposes and says: That, from information and belief, no assigment or transfer of the above claim has been made, or of any part or interest therein, except as in said petition stated; that the said claimant is justly entitled to the amount therein claimed from the United States, and that he believes the facts as stated in said petition are true.

Sworn and subscribed to before me, in the city of Washington, this 18th day of August, A. D. 1868.

[SEAL.] JOHN H. McCUTCHEN,
*Notary Public.*

Claimant's address, New Orleans.
Claimant's solicitors, Black, Lamon & Co.

3 In the United States Court of Claims. December term, A. D. 1868.

JEAN M. LAPEYRE
*vs.*
THE UNITED STATES. } No. 3512. Filed July 19, 1869.

And the said defendants, by their Attorney General, come and make

answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $ , the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
*Assistant Attorney General.*

And, for a further plea to the said petition, the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described, in the Court of Claims, as provided by the 3d section of the act of Congress approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

L. LYLE DICKEY,
*Assistant Attorney General.*

And, for a further plea to the said petition, the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing of his said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents therein set forth, were made and done in the administration of, and in virtue and under color of, the act of Congress entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," approved March 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defence of the Treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
*Assistant Attorney General.*

4 In the Court of Claims.

JEAN M. LAPEYRE
*vs.*
THE UNITED STATES. } 3512.

At a Court of Claims, held at the Capitol, in the city of Washington, fifteenth of May, A. D. 1871, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of

the defendants, and do order, adjudge, and decree that the said claimant take nothing by his suit, and that his petition be dismissed.

By the court.

A true copy of record.

5 In the Court of Claims.

JEAN M. LAPEYRE
*vs.*
THE UNITED STATES. } 3512.

From the judgment in the above-entitled cause, rendered May 15, 1871, in favor of the defendants, the claimant, by his attorneys, on this 17th May, 1871, makes application for, and gives notice of, an appeal to the Supreme Court of the United States, the amount in controversy therein exceeding three thousand dollars.

WARD H. LAMON AND
CHARLES E. HOVEY,
*Att'ys for Claimant.*

Filed in the clerk's office, May 16, 1871.

Ordered, that the appeal, as prayed in the case of Jean M. Lapeyre vs. The United States, No. 3512, be allowed.

May 16, 1871.

By the court.

A true copy of record.

6 Court of Claims.

JEAN M. LAPEYRE
*vs.*
THE UNITED STATES.

*Finding of facts and conclusion of law.*

The court, having examined and considered the evidence, find the facts in this case to be as follows:

1. In pursuance of the eighth section of the act of July 2, 1864, entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection," Otis N. Cutler was appointed by the Secretary of the Treasury, with the approval of the President, to purchase at New Orleans, Louisiana, for the United States, product' of States declared in insurrection.

2. On the 9th day of May, 1865, the Secretary of the Treasury, with the approval of the President, adopted and promulgated, to take effect on the 10th day of that month, the following "Amended regulations for the purchase of the products of the insurrectionary States on Government account:"

7 "I. Agents shall be appointed by the Secretary of the Treasury, with the approval of the President, to purchase for the United States, under special instructions from the Secretary of the Treasury, products of States declared to be in insurrection, at such

places as may, from time to time, be designated by the Secretary of the Treasury as markets or places of purchase."

"III. The operations of purchasing agents shall be confined to the single article of cotton, and they shall give public notice at the place to which they may be assigned that they will purchase in accordance with these regulations all cotton not captured or abandoned, which may be brought to them.

"IV. To meet the requirements of the 8th section of the act of July 2, 1864, the agents shall receive all cotton so brought, and forthwith return to the seller three-fourths thereof, which portion shall be an average grade of the whole, according to the certificate of a sworn expert or sampler.

"V. All cotton purchased and resold by purchasing agents shall be exempt from all fees and all internal taxes, and the agents selling shall mark the same 'free,' and furnish to the purchaser a bill of sale, clearly and accurately describing the character and quantity sold, and containing a certificate that it is exempt from taxes and fees as above."

8 3. The proclamation of the President, bearing date June 24, 1865, was not published in newspapers until the morning of the 27th day of that month, nor was it published or promulgated anywhere or in any form prior to said last-named day, unless its being sealed with the seal of the United States in the Department of State was a publication or promulgation thereof.

4. On the said 27th of June the Secretary of the Treasury sent to said Cutler, by telegraph, a message in these words: "The twenty-five per cent. to Government on cotton west of the Mississippi is removed by proclamation. Close up business with transactions of the twenty-fourth. Annul everything done since then."

On the 28th of June, 1865, the Secretary of the Treasury wrote a letter to the said Cutler in the following words: "Your letter of the 16th inst. in answer to mine of the 24th ult., and showing that the amended regulations of May 10th, concerning the purchase of products of insurrectionary States were generally satisfactory in your agency, has been received. They have been rescinded, as you have been advised by telegraph, by the proclamation of the President, of June 13th and June 24th, inst. As all cotton now moves subject only to the

9 internal-revenue tax of two cents per pound you will proceed immediately to close the business of your office.

"The following rules have been adopted by the Department:

"The purchasing agents are authorized to refund, without referring each case to this Department, whenever they have collected six cents per pound on cotton in addition to the 25 per cent. on or since May 10th last, the date of the 'amended regulations.' Also, wherever they have taken 25 per cent. on cotton grown east of the Mississippi River, after June 13th, inst., the charge on such cotton from that date being only the internal-revenue tax; also, wherever they have charged 25 per cent. on cotton coming from west of the Mississippi River after June 24th, instant, on which, after that date, only the internal-revenue tax is due."

5. On or about the 18th of June, 1865, the claimant caused to be shipped at some point on Red River, (which river is west of the Mississippi River,) on board the steamboat "Bella Donna," and consigned to the said Cutler, as purchasing agent of the Government, 476 bales of cotton, with which on board the said steamboat arrived at New Orleans on the following 24th of June. At that time no shipments of

10 cotton from west of the Mississippi River to New Orleans were allowed, except such as were consigned to such purchasing agent.

6. On the 26th of June, 1865, the claimant executed a bill of sale to the said Cutler, as purchasing agent, of the said 476 bales of cotton, and on the same day the said Cutler executed to the claimant a bill of sale, back, of 357 bales of the same cotton, and retained in his possession the remaining 119 bales thereof, which were sold by the agents of the United States; and the net proceeds thereof were $9,955 66, which sum was paid into the Treasury of the United States. When this sale and resale took place neither the claimant nor the said Cutler had any knowledge or information of the proclamation aforesaid.

7. The claimant has always borne true allegiance to the Government of the United States, and never gave aid or comfort to persons engaged in rebellion against said Government.

Upon the foregoing facts the conclusion of law reached by the court is that the claimant has no right of action for the proceeds of the 119 bales of cotton aforesaid.

By the court.

11 In the Court of Claims.

JEAN M. LAPEYRE
*vs.*
THE UNITED STATES. } No. 3512.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the solicitors for claimant for the allowance of an appeal, as filed in the clerk's office, May 16, 1871, and of the order of the court, May 16, 1871, allowing the same; of the finding of the facts and the conclusion of law thereon, on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this second day of June, A. D. 1871.

[SEAL.] JOHN RANDOLPH,
*Ass't Clerk Court of Claims.*

(Indorsement on cover:) No. 546. Jean M. Lapeyre, appellant, vs. The United States. Court of Claims. Filed 7th June, 1871.

REC. 546—2

SUPREME COURT OF THE UNITED STATES.

No. 318.

JEAN M. LAPEYRE,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF

H. H. BLACKBURN,
WARD H. LAMON,
CHARLES E. HOVEY,
} of Counsel for appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

J. M. LAPEYRE
vs.
THE UNITED STATES.
} Appeal from the U. S. Court of Claims.

This is a suit brought in the Court of Claims of the United States by Lapeyre, for the proceeds of the sale of 119 bales of cotton taken by O. N. Cutler, United States Treasury Agent at New Orleans, on the 26th day of June, 1865, out of a shipment of cotton, amounting to 476 bales consigned to, and owned by Lapeyre. The said 119 bales being taken by virtue of the Treasury regulations, and shipped from New Orleans to New York and there sold, under the directions of the the Treasury Agent, and the proceeds placed in the Treasury. The proceeds amounting to the sum of $9.955.66.

The Court decided adversely to the claim, but made the following "Findings of facts and conclusions of the law."

The Court, having examined and considered the evidence, find the facts in this case to be as follows:

1. In pursuance of the eighth section of the act of July 2, 1864, entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection," Otis N. Cutler was appointed by the Secretary of the Treasury, with the approval of the President, to purchase at New Orleans, Lousiana, for the United States, products of States declared in insurrection.

2. On the 9th day of May, 1865, the Secretary of the Treasury, with the approval of the President, adopted and promulgated, to take effect on the 10th day of that month, the following "Amended regulations for the purchase of the products of the insurrectionary States on Government account:"

"I. Agents shall be appointed by the Secretary of the Treasury,
7 with the approval of the President, to purchase for the United States, under [special [instructions from the Secretary of the Treasury, pruducts of States declared to be in insurrection, at such

places as may, from time to time, be designed by the Secretary of the Treasury as markets or places of purchase."

"III. The operations of purchasing agents shall be confined to the single article of cotton, and they shall give public notice at the place to which they may be assigned that they will purchase in accordance with these regulations all cotton not captured or abandoned, which may be brought to them.

"IV. To meet the requirments of the 8th section of the act of July 2, 1864, the agents shall receive all cotton so brought, and forthwith return to the seller three-fourths thereof, which portion shall be an average grade of the whole, according to the certificate of a sworn expert or sampler.

"V. All cotton purchased and resold by purchasing agents shall be exempt from all fees and all internal taxes, and the agents selling shall mark the same 'free,' and furnish to the purchaser a bill of sale, clearly and accurately describing the character and quantity sold, and containing a certificate that it is exempt from taxes and fees as above."

8 3. The proclamation of the President, bearing date June 24, 1865, was not published in newspapers until the morning of the 27th day of the month, nor was it published or promulgated anywhere or in any form prior to said last-named day, unless its being sealed with the seal of the United States in the Department of State was a publication or promulgation thereof.

4. On the said 27th of June the Secretary of the Treasury sent to said Cutler, by telegraph, a message in these words: "The twenty-five per cent. to Government on cotton west of the Mississippi is removed by proclamation. Close up business with transaction of the twenty-fourth. Annual everything done since then."

On the 28th of June, 1865, the Secretary of the Treasury wrote a letter to the said Cutler in the following words: "Your letter of the 16th inst., in answer to mine of the 24th ult., and showing that the amended regulations of May 10th, concerning the purchase of products of insurrectionary States were generally satisfactory in your agency, has been received. They have been rescinded, as you have been advised by telegraph, by the proclamation of the President, of June 13th and June 24th, inst. As all cotton now moves subject only to the in-

9 ternal revenue tax of two cents per pound you will proceed immediately to close the business of your office.

"The following rules have been adopted by the Department:

"The purchasing agents are authorized to refund, without referring each case to this Department, whenever they have collected six cents per pound on cotton in addition to the 25 per cent. on or since May

10th last, the date of the 'amended regulations.' Also, wherever they have taken 25 per cent. on cotton grown east of the Mississippi River, after June 13th, inst., the charge on such cotton from that date being only the internal revenue tax; also, wherever they have charged 25 per cent. on cotton coming from west of the Mississippi River after June 24th, instant, on which, after that date, only the internal revenue tax is due."

5. On or about the 18th of June, 1865, the claimant caused to be shipped at some point on Red River, (which river is west of the Mississippi River,) on board the steamboat "Bella Donna," and consigned to the said Cutler, as purchasing agent of the Government, 476 bales of cotton, with which on board the said steamboat arrived at New Orleans on the following 24th of June. At that time no shipments of cotton from west of the Mississippi River to New Orleans were allowed, except such as were consigned to such purchasing agent.

6. On the 26th of June, 1865, the claimant executed a bill of sale to the said Cutler, as purchasing agent, of the said 476 bales of cotton, and on the same day the said Cutler executed to the claimant a bill of sale, back, of 357 bales of the same cotton, and retained in his possession the remaining 119 bales thereof, which were sold by the agents of the United States; and the net proceeds thereof were $9,955.66, which sum was paid into the Treasury of the United States. When this sale and resale took place neither the claimant nor the said Cutler had any knowledge or information of the proclamation aforesaid.

7. The claimant has always borne true allegiance to the Government of the United States, and never gave aid or comfort to persons engaged in rebellion against said Government.

Upon the foregoing facts the conclusion of law reached by the Court is that the claimant has no right of action for the proceeds of the 119 bales of cotton aforesaid.

By the Court.

And hence this appeal.

This cotton came from West of the Mississippi River, and was taken, received and receipted for on the 26th day of June. But on the day of the arrival of the cotton at New Orleans, June the 24th, 1865, the President of the United States signed, issued, and caused the seal of the United States to be affixed to a proclamation, countersigned by the Secretary of State, declaring that all restrictions upon internal domestic and coastwise intercourse and trade, and upon the purchase and removal of products of States and parts of States and Territories theretofore declared in insurrection, west of

the Mississippi River, were removed, and directing that they be *forthwith annulled.*

The question presented for the consideration of this Court is, "When did the proclamation of the President, of June 24th, go into effect—whether on the day it was issued, signed, countersigned, sealed and filed in the State Department, or at a subsequent time."

It is one of the findings of the Court below, that "the proclamation of the President was not published in newspapers until the morning of the 27th day of the month."

The appellant insists that it would matter not whether the newspapers ever published the proclamation, it had the force and effect of a public statute as soon as it was filed in the State Department. If it were necessary to give force and effect to a proclamation, that newspapers should publish it, pray, what papers should do the publication? The New York *Tribune* or New York *Herald*; the Chicago *Tribune* or *Times*; or in the New Orleans papers? And if so, in how many of them, and how long should its publication have been continued? Until all the citizens of the United States are informed of its existence; or only until the information is carried to the parties interested in its results? Is it to take effect when published in papers friendly to the existing administration, or must its efficacy depend upon its public announcement by all the leading journals of the country? The absurdity of such a doctrine is a sufficient refutation of it.

The rule applicable to proclamations, like the one in question, is identical with that now in force, both in this country and in England, in regard to a public statute, which takes effect from its date, if not otherwise provided.

"A statute takes effect from its date," when no time is fixed; and the time when an act, approved and signed by the President, takes effect, can properly appear only from the act itself. It goes into operation the day on which it is approved, and has relation to the first moment of that day. In Re. Welman 20, Vermont Rep. 653, case of Brig Ann 1 Gall. 62, Matthews vs. Zane, 7, Wheaton 164. Arnold vs. U. S. 9 cranch. 104. In this last case, the question was, "Whether certain goods imported on the 1st day of July, 1812, were subject to the double duties imposed by the Act of 1812, approved by the President on the 1st day of July." The duties were levied by the terms of the Act, upon all goods imported into the United States, from and after its passage; and the Court held that the statute took effect on the day of its approval, and during the whole of that day.—

And there is no reason for the application of a different rule to an Act of the President, done in pursuance of law.

In the prize cases decided by this Court, 2 Black, page 635, it was held, "The proclamation of blockade, by the President, is, of itself, conclusive evidence that a state of war existed, which demanded and authorized recourse to such a measure. It is a settled rule that a vessel in a blockaded port is presumed to have notice of a blockade as soon as it commences."

In the case of the Proctor, 12 Wallace, page 700, it was held by this Court "That the proclamation of the blockade by the President, marked the date of the beginning of the late civil war, and that its commencement in certain States will be referred to the first proclamation of blockade embracing them, and made on the 19th of April, 1861; and as to other States, to the second proclamation of blockade embracing them, and made on the 27th of April, 1861. Its termination as to certain States will be referred to the proclamation of the 2nd of April, 1866, declaring that the war had closed in those States; and as to Texas, to the proclamation of the 20th of August, 1866, declaring it had closed in that State, also." In this case the Court did not inquire whether the proclamation of the President had been published in the newspapers of Alabama, or whether the parties litigant were ever advised of the proclamation of the President, by which the war was terminated in the State of Alabama; but the rights of the parties were settled by this Court upon the doctrine that the proclamation of the President, of the 2nd of April, 1866. took effect from its date.

The proclamation of Emancipation gave liberty to the slaves in Texas and Florida, as well as in Virginia, on the day it was issed by the President, and all the departments of the Government recognized the fact that the proclamation terminated slavery in all the States of the Union, from the day it was so issued, without regard to the time when the slave-owner was advised of the issuance of said proclamation. Such was the construction of the Secretary of the Treasury of the United States, placed upon the proclamation of the President, of the 24th day of June, 1865, for on the 27th day of that month he telegraphed O. N. Cutler, Esq., the agent at New Orleans, to close up business with transactions of the 24th, and annul everything done since then, (findings of the Court of Claims in this cause,) and yet it was after that date that the said agent, Cutler, took the cotton belonging to the appellant, sold it and deposited the proceeds in the Treasury of the United States

It was clearly the duty of the Secretary of the Treasury to give

immediate notice of this proclamation to his under officers, and not only to instruct them to annul everything done inconsistent with the proclamation, but where money had been received by such under officers or agents in violation of the provisions of the proclamation, to pay back the same to the parties entitled thereto. The fact that the parties to this transaction were ignorant of the law, cannot excuse them, or prejudice the rights of Lapeyre, and he is therefore justly entitled to recover from the United States the proceeds of the cotton sold by the agent, Cutler, in ignorance of the fact that the regulations under which it was so sold had been annulled by the President's proclamation. It is clear that the Government of the United States has now in its treasury the sum of $9,995.66, the proceeds of the sale of cotton belonging to Lapeyre, which cotton was surrendered to Cutler under the belief of the parties that they were complying with the then existing regulations of the Treasury Department.—Those regulations had theretofore been annulled, and although Lapeyre had always borne true allegiance to the Government of the United States, it still retains his money without consideration.—Therefore, his rights in the premises entitle him to recover, in this suit, the sum of $9,995.66, together with interest thereon from the 24th day of June, 1865.

H. H. BLACKBURN,
WARD H. LAMON,
CHAS. E. HOVEY,
*Of Counsel for Appellant.*

# In the Supreme Court of the United States.

DECEMBER TERM, 1872.

JEAN M. LAPEYRE
*vs.*
THE UNITED STATES. } No. 99.

*Appeal from the Court of Claims*

BRIEF FOR THE UNITED STATES.

# In the Supreme Court of the United States.

DECEMBER TERM, 1872.

JEAN M. LAPEYRE
*vs.*
THE UNITED STATES. } No. 99.

*Appeal from the Court of Claims*

BRIEF FOR THE UNITED STATES.

ARGUMENT.

The only question in this case arises under the third finding of the Court of Claims, that the proclamation of the President removing restrictions on trade west of the Mississippi, and dated the 24th of June, 1865, (13 Stats. at Large, 769,) was not published or promulgated anywhere or in any form prior to June 27.

Record, page 4.

Did the proclamation take effect from its date, or from the time when it was promulgated? There is no statute bearing on this subject or making any regulations in regard to the manner in which official proclamations shall be made by the Executive department, and the practice which has existed from the foundation of the Government seems to have been copied from the mode of issuing proclamations existing in England. There, every proclamation is issued under the great seal, and it is stated that "every proclamation ought to

be *sub magno sigillo Angliæ*, and it is most proper and safe to be so pleaded."

Com. Dig., Prerogative D., 3.

But if the great seal is essential in England to a royal proclamation, (which may be doubtful,) there is nothing beyond custom which renders it necessary that the President's proclamations should be under the great seal of the United States, although it may be eminently proper for the great seal to be affixed thereto.

A proclamation would seem to be complete when signed by the President and properly promulgated, but until promulgated a proclamation can have no force whatever. Not only is it up to that time within the power of the President to annul it, but until promulgated, from the very nature of the transaction, it must be entirely inchoate; as much so as if unsigned. Its office is to announce to the country a certain fact, and so long as it remains unannounced, in the possession of the President or of the Secretary of State, under his direction, it is as incomplete as a commission unsigned, or a diplomatic or other letter never sent. Until it is published it is no proclamation at all.

In the absence of all other evidence, a proclamation will undoubtedly be presumed to have been promulgated on the day of its date, as it will be presumed that a deed or other instrument was delivered on the day of its date, and so takes effect from that day. But this is a presumption only, which may be removed by evidence that it was published on some subsequent day, as in the present case.

United States *vs.* Le Baron, 19 How., 73.

The case of a statute is not applicable. Statutes require the assent both of the executive and legislative departments of the Government; and when a statute passed by the legislature has been approved by the Executive, its enactment is complete and it can be altered only by a subsequent statute enacted with the same formalities. The same is true in respect to the commission of a public officer which it has been decided need not be delivered, but is complete on receiving the signature of the President, when it becomes the duty of the Secretary of State to affix the great seal.

But as the essential and effective part of the issuing of a proclamation is its publication, until it is published it can have no force or effect whatever.

C. H. HILL,
*Assistant Attorney General.*

# Supreme Court of United States.

JEAN M. LAPEYRE,
v.
UNITED STATES.

## Brief of P. PHILLIPS.

*For Appellant.*

The material facts found by the Court of Claims on which the judgment is rested, are:

*First.* That Lapeyre has always borne true allegiance to the United States.

*Second.* That on the 26th June, 1865, the matter now the subject of controversy took place in the City of New Orleans. In this the government agent demanded and received the one-fourth of the cotton, to wit, 119 bales as due to the Government, and the proceeds of these 119 bales, amounting to $9,995.66, have been paid into the Treasury.

*Third.* That the Secretary sent a telegram to its agent in New Orleans, on 27th June, also a letter on 28th June, informing him that the exaction of 25 per cent. on cotton had been rescinded. The transaction was entered into by both parties ignorant of the removal of the restrictions.

*Fourth.* That the proclamation of the 24th June was not published in newspapers until the 27th—nor was it published or promulgated anywhere or in any form prior to last date, unless its being sealed with the seal of the United States in the Department of State was a publication or promulgation.

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This transaction it is to be observed, took place after hostilities had ceased. Kirby Smith, who commanded west of the Mississippi, surrendered on 26th May, 1865. Lee had already surrendered on 9th April, and Johnson on 26th April. The war was in *point of fact ended.*

By the 5th section of the act 13th July, 1861, (12 Stat. 257,) the President was authorized to proclaim, "that the inhabitants of a State, or any part thereof, where such insurrection exists, are in state of insurrection against the United States;" and thereupon, "all *commercial* intercourse," between such inhabitants and the citizens of the rest of the United States; "shall cease and be unlawful, *so long as such condition of hostility shall continue.*"

This section further vests in the President the right to license such intercourse under rules and regulations to be prescribed by the Secretary of the Treasury.

By the 8th section of the act of 2d July, 1864, (13 Stat. 377.) the Secretary, with the approval of the President, was authorized to purchase for the United States the products of the States declared to be in insurrection, at three-fourths the value thereof in New York.

On the 10th May, 1865, the President issued his procla-

mation that "armed resistance to the authority of this government may be regarded as virtually at an end." (13 Stat. 757.)

We thus see that prohibition of commercial intercourse provided for by the act of 1861, continued only so long as hostilities existed, and was to end when they ceased—and that the proclamation of the President declared that they had ended on 10th May, 1865.

The ground for taking from owners of property the one-fourth of its value, was, that the condition of hostilities deprived them of the right to sell it, and the one-fourth was the consideration for the special privilege to do so. As soon as hostilities ceased, the rights of commercial intercourse returned, and there was no longer any consideration upon which the claim of the one-fourth could be rested.

To give full effect to this result of the law, two proclamations were issued; the first on the 13th of June, 1865, removing all restrictions on "internal, domestic and coast wise trade, and upon the removal of products of States heretofore declared in insurrection "*east* of the Mississippi River." (13 Stat., 763.)

The second was issued on the 24th June, 1865, containing similar provisions as to purchase and removal of products of States "*lying west* of Mississippi River." (13 Stat., 769.)

We thus see that these proclamations were issued under the requirement of the act of 1861, and are but a formal notification that the prohibition under that act no longer existed. In other words that hostilities no longer continued.

When then did those proclamations take effect?

They were signed by the President and Secretary of State, the great seal attached and deposited in the State Department on the day they bear date.

The purchase on which the government agent claimed the one-fourth, was made in New Orleans on the 26th June, or two days after the fact had been officially determined *that hostilities had ceased*, and the legal consequence announced that commercial restrictions were annulled.

It is very true that the transaction was made in ignorance of the proclamation. Both the parties contracted under the impression that the state of hostilities still continued, and that the restrictions on trade, still existed. Here was a mistake of *fact*, against which the principles of equity would relieve.

Hunt v. Rousmanier, 8 Wheat., 174.

Same Case, 1 Pet., 1.

The department, charged with the execution of the laws respecting such purchases, has given its construction, and holds that these proclamations operate from their date. It has, accordingly, directed its agents to refund "wherever they have taken twenty-five per cent. on cotton grown east of the Mississippi River, after June 13; the charge on such cotton from that date being only the internal revenue tax; also, wherever they have charged twenty-five per cent. on cotton coming from west of the Mississippi, after June 24th, on which, after that date, only the internal revenue tax is due.

Here is a proclamation not imposing a penalty but relieving from a forfeiture; and it is supposed to have no effect

because it was not published or promulgated until the 27th June.

I know of no act of Congress which requires this publication as a condition of validity, and if publication is to be made the test, then it must be an *official* publication, and none other could be recognized. Thus, through official neglect in delaying publication, a state of hostility produced by war might be continued—though the war had in fact ended, and the President had done all that the law required him to do in fixing its termination.

The act of the President in discharging the duty imposed on him by the law, stands on the same footing as if this declaration had been made by an act of legislation; and it will not, and cannot be disputed, that an act of Congress on this subject, approved on 24th June, would be operative from its *date*.

This is the rule, even where penalties or increased burthens are imposed, though, in fact, it was impossible to know of the existence of the law when they were incurred.

This common law rule is modified in the civil law, which requires promulgation, and gives time for knowledge, according to the distance of parties from the seat of legislation.

But in both systems, the rule is an *arbitrary one*, and under neither would a party be permitted to show, in his defense, that it was impossible, from the situation in which he was placed, to have known of the existence of the law.

An exceptional case is to be found in 1 Paine, 23, in which Judge Livingston reasoned to the conclusion, that the embargo law ought not to be so construed as to

condemn a vessel that sailed from a port where the law was not known to have been passed.

So this court, in passing on the question as applied to a treaty, held that its ratification as between the governments had relation back to the date, but as to individuals, it would be manifestly unjust to permit such relation to divest a title already vested.

Haver v. Yaker, 9 Wall., 35.

But, as we have said, this is not a case where a penalty is imposed, and where natural feelings of justice would influence the court to seek escape from inflicting punishment on parties for an act which they believed to be innocent. To the contrary, giving effect to this act from its date, restores the party to a right, which, in justice, he is entitled to, and which the law of the land intended to confer upon him.

Suppose that Lapeyre had entered into a contract with a party west of the Mississippi on 26th June, and upon suit brought by him to enforce said contract; it had been defended on the plea that the contract was invalid, as made between parties forbidden by law to have commercial intercourse with each other—would such a defense be sustained? It was then known that Kirby Smith, who commanded west of the Mississippi, had surrendered the last army of the Confederacy, a month before,—that the war was, in point of fact, ended—and that the act of 1861 only authorized the President to prohibit commercial intercourse "*so long as such condition of hostilities should continue*," and if a proclamation was necessary to restore validity to such intercourse, he had the right to assume that it had been issued. If, in the supposed suit, it was shown that the proclamation had

been in fact made on 24th June, would it be in law a sufficient reply to say, that it was not published in the newspapers until the 27th?

All that has been urged on the other side is, that while the proclamation lies in the State Department, though signed and sealed, yet it is subject to revocation by the President, at any time, before he has it published. This may be. But when it is not revoked, it must take effect not from the date of publication, but from the date of its application. A judgment of a court may, during the term, be set aside or modified, but if this is not done it is not less a judgment on the day when it was rendered.

This question, as it respects the operation of laws under the systems both of the civil and common law, is treated of by Chancellor Kent, in the 1st vol. of his Commentaries, p. 501.

This precise question was submitted to the Attorney General, and decided by him, in an elaborate opinion, on 14th March, 1866, in which he held that the "solemnities of the sign manual of the President, and the seal of the United States, are conclusive evidences that on the day they were performed, the President did the act declared in the proclamation. No other solemnity was required, no other act was needed. The transactions as respects the removal of restrictions, was choate and complete, when the signature of the President was affixed, and the proclamation handed to the Secretary of State, with special warrant to affix thereto the seal that was to attest the verity of the President's signature."

"The question presented for my consideration is whether it took effect on the day of date, or on the day after the 24th June when it was made public and received in your department."

The question is answered in a carefully prepared argument by the highest law officer of the government, in the emphatic declaration, that the proclamation took effect from its date, and we submit there is nothing in the nature of this proclamation which calls upon the court to reverse this opinion, and the practice of the government under it.

P. PHILLIPS.

25 March, 1873. *For Appellant.*

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